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SUPREME COURT OF THE UNITED STATES.

No. 148.

ANN BRABSTON, PLAINTIFF IN ERROR,

vs.

TOBIAS GIBSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR LOUISIANA.

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J. & G. S. Gideon, Printers.

Circuit court of the United States in and for the fifth circuit and district of Louisiana. April term, A. D. 1846.

ANN BRABSTON
vs.
TOBIAS GIBSON. } 1457.

Pleas and proceedings before the honorable Theodore H. McCaleb, one of the judges of the circuit court of the United States in and for the fifth circuit and district of Louisiana, at a circuit court of the United States in and for the circuit and district aforesaid, begun and held at New Orleans, in said district, on the tenth day of November, A. D. one thousand eight hundred and forty-six.

Be it remembered, that heretofore, to wit, on the 14th day of February, A. D. 1846, came the plaintiff, Ann Brabston, by her attorney, Robert Mott, esq., and filed in the clerk's office of said court her petition against the defendant, Tobias Gibson, in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit, holding sessions at New Orleans, in and for the district of Louisiana:

The petition of Ann Brabston, who avers that she is a citizen of the State of Mississippi, residing in Warren county, in said State, humbly shows: That Tobias Gibson, who is a citizen of the State of Louisiana, residing therein, within the jurisdiction of this honorable court, is justly and truly indebted to petitioner in the full sum of thirteen thousand dollars, and interest at the rate of eight per centum per annum, from the first of February, 1845, on six thousand dollars, and at the same rate from the 1st of February, 1846, on the balance of said sum, until paid, ten dollars costs of protest; for this, to wit: That petitioner is the holder and owner of two certain promissory notes; the first, dated in the parish of Concordia, December 24, 1839, for the sum of six thousand dollars, payable on the first day of February, 1845, to the order of William Harris, and by said Harris endorsed before maturity, payable at the Agricultural Bank of Mississippi, with the privilege of deferring the payment one year after maturity, by paying eight per cent. interest per annum during the time of payment deferred; and the second, dated at the parish of Concordia, 24th December, 1839, for the sum of seven thousand dollars, payable on the first of February, 1846, to the order of William Harris, and by him endorsed before maturity, payable at the Agricultural Bank of the State of Mississippi, with the privilege of deferring payment for the space of one year after maturity, by paying eight per cent. interest per annum during the time of payment deferred; both of which said notes are hereto annexed for greater certainty, and made part of this petition.

And petitioner avers, that, at the time said notes were drawn, and at the time they were endorsed, to wit, on the day of December, 1839, and at this time, the said William Harris was and is a citizen of the State of Mississippi, residing in Adams county, in said State.

And petitioner avers that, at the day of the maturity of the said two notes, they were respectively presented at the Agricultural Bank of Mississippi, and payment demanded and refused; and that the said Gibson did not claim to defer the payment of the said notes, but has altogether refused to pay the same, although amicably requested thereto.

Wherefore petitioner prays, that the said Tobias Gibson be cited to answer this petition; and, after due proceedings, that he be condemned to pay petitioner the said sum of thirteen thousand dollars, and interest at eight per centum per annum until paid; that is to say, on the sum of six thousand dollars from the first of February, 1845, and on the sum of seven thousand dollars from the first of February, 1846, and ten dollars costs of protest, and costs of suit; and for all further and general relief in the premises, &c.

ROBERT MOTT,
Atty. for petitioner.

Note A.

$6,000 PARISH OF CONCORDIA,
December 24, *A. D.* 1839.

On the first day of February, one thousand eight hundred and forty-five, I promise to pay to the order of William Harris six thousand dollars, for value received; payable at the Agricultural Bank of the State of Mississippi, with the privilege of deferring payment for the space of one year after maturity, by paying eight per cent. interest per annum during the time of payment deferred.

TOBIAS GIBSON.

(Endorsed:)
WM. HARRIS.

Ne varietur, 24th Dec., 1839.

G. W. KEATON, *P. Judge.*

Note B.

$7,000. PARISH OF CONCORDIA,
December 24, *A. D.* 1839.

On the first day of February, one thousand eight hundred and forty six, I promise to pay to the order of William Harris seven thousand dollars, for value received, payable at the Agricultural Bank of the State of Mississippi, with the privilege of deferring payment for the space of one year after maturity, by paying eight per cent. interest during the time deferred.

TOBIAS GIBSON.

(Endorsed:)
WM. HARRIS.

Ne varietur, 24 Dec., 1839.

G. W. KEATON, *P. Judge.*

And afterwards, to wit, on the 2d day of April, 1846, said defendant having been duly and legally cited to appear and answer plaintiff's petition, came he, in the clerk's office of said court, by his attorneys, Prentiss and Finney, esqs., and filed his answer to said petition, in the words and figures following, to wit;

The answer of Tobias Gibson to the petition of Ann Brabston, exhibited against him in the court aforesaid.

This defendant denies all and singular the matters and things set forth and alleged in plaintiff's petition, except such as hereafter specially confessed and admitted. Defendant admits the execution of the two notes sued on, and that he signed the same and delivered them to William Harris, to whose order they are payable, at the time of their execution. But defendant wholly denies that plaintiff is the owner thereof, or entitled to sue thereon. Further answering, defendant states that both the notes sued on were executed and given to the said William Harris, in sole consideration of the purchase, and for a part of the price of one undivided half of a certain plantation, and certain slaves thereon, purchased by said defendant from said Harris, on the 24th day of December, 1839; which purchase, as well as execution and delivery of said notes, was evidenced by an authentic act of sale, passed before George W. Keeton, parish judge of the parish of Concordia in this State, on the day and year last aforesaid, and a duly certified copy of which act is hereto annexed, and made a part of this answer.

Defendant further alleges, that in said act of sale said vendor, Harris, specially stipulated for and reserved to himself the right of redemption of the property so sold for the period of ten years from the date of said act, as will more fully appear by reference thereto, and said notes sued on were identified with said act, and marked *ne varietur* by the parish judge, as appears upon their face, as also in said act.

Defendant further alleges that afterwards, to wit, on the 18th day of September, 1841, and long before the maturity of either of the notes sued on, the said William Harris claimed the right of redemption, so reserved by him in the act of sale above mentioned, and according to the stipulations and provisions set forth and contained in said act; wherefore, and in accordance with said claim by said Harris, and of the stipulations of said original act of sale, this defendant did, on said 18th day of September, 1841, at the parish of Concordia, and in conjunction with his wife Amanda Fletcher, by authentic act passed before James Dunlap, judge, and ex officio notary public in and for said parish of Concordia, did resell and reconvey said property conveyed to him by said first mentioned act to the said Harris, according to the rights and claims of said Harris to redeem the same.

And defendant further states, that by said last mentioned act said Harris did, in part consideration thereof, cancel the two notes sued on, and wholly discharge and release defendant from all liability therefor; all of which will more fully appear by reference to an authenticated copy of said last mentioned act, which is hereto annexed, and made part of this answer.

Defendant further states, that both said acts above mentioned were, upon their execution respectively, duly recorded in the proper office. And so said defendant says that said notes, by virtue of said claim of the right of redemption, and of the reconveyance made in consequence thereof by this defendant and wife to said Harris, and by virtue of the stipulations contained in said act of resale, and by operation of law, were wholly discharged, and this defendant released from all liability therein.

Further answering, defendant says, that said notes sued on were not transferred to said plaintiff bona fide in the ordinary course of business, nor did she obtain possession thereof as owner, nor is she the owner thereof; but said notes were delivered to said plaintiff, and received and held by her as collateral security for the payment of a certain note, drawn by said Harris, and held by said plaintiff, for the sum of six thousand dollars, ($6,000,) dated Natchez, 21st January, 1840, and payable twelve months after date; that said plaintiff has never instituted suit upon said last mentioned note, nor made any attempt to enforce the collection of the same.

Defendant further states, that said notes were so deposited with said plaintiff, as collateral security as aforesaid, without his knowledge or consent, and in fraud of his rights, and that he had no notice whatever that said plaintiff held said notes until long after his reconveyance to said Harris as aforesaid, nor until long after he had transacted with said Harris in relation to said notes as aforesaid, and had been wholly released and discharged therefrom.

Defendant further states, that said notes are payable in the State of Mississippi, and governed in their obligation and validity by the laws of said State, and that the transfer or pledge of said notes, made by said Harris to said plaintiff, as collateral security for the payment of his own note as aforesaid, was also made in the State of Mississippi, and is governed by the laws of said State. And defendant avers, that by the laws of said State of Mississippi, upon the redemption of said Harris of the property, for a portion of the price of which said notes were given as aforesaid, and upon the release and discharge of said notes by said Harris, as aforesaid, said notes were wholly satisfied and discharged, nor can said plaintiff by the laws of said State maintain any action thereon.

Wherefore said defendant prays that plaintiff's claim be rejected, with costs, &c., and that a jury trial be awarded in this case, and for all other relief.

PRENTISS & TURNEY,
Attorneys for deft.

Act of sale annexed to answer.

THE STATE OF LOUISIANA,
Parish of Concordia, ss:

Be it remembered, that, on this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, before me, George W. Keeton, parish judge and ex-officio notary public in

and for the parish aforesaid, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared William Harris, a citizen and resident of Adams county, State of Mississippi; which appearer did declare and say, that, for the consideration hereinafter expressed, he hath sold, conveyed, and delivered, and by these presents does sell, convey, transfer, and deliver, with full warranty of title against the claims of all persons whatever, against all legal redhibitory defects, and against all mortgages, liens, and incumbrances whatever, (except those only, the payment of which is hereinafter expressly assumed by the vendee,) unto Tobias Gibson, a resident of the parish of Concordia, here present, and accepting for himself, his heirs, and assigns, all the following described property, to wit: First. One undivided half of that tract of land, or cotton plantation, situate in the parish of Concordia, containing, in the aggregate, twelve hundred and nineteen ninety-five hundredths acres, owned jointly by said appearer and the said Tobias Gibson, and upon which the said Gibson now resides, and being composed of the following parcels of land, to wit: first, section No. 4, in township No. 8, in range No. 10 east, situate on Lake St. John, in the parish of Concordia, containing four hundred and sixty-one and seventy hundredths acres; second, lot No. 2, of section No. 3, in township No. 8, in range No. 10 east, containing one hundred and nine and twenty-five hundredths acres, said two tracts of land having been purchased of the United States by Nathaniel Harrison, as per the receiver's receipts, Nos. 1,345 and 1,346, dated the 4th September, A. D. 1833; and, third, a tract of land situate in said parish, near Rifle point, about twelve miles above the town of Vidalia, containing six hundred and forty-nine acres, more or less, the undivided half of which was acquired by said appearer from said Gibson by purchase, by act passed before William L. Poindexter, a notary public in and for the parish, dated 24th day of March, A. D. 1838, and recorded in the office of the parish judge of said parish in book H, at pages 318, 319, and 320, together with all the rights and privileges, buildings, and improvements, stock of cattle, horses, hogs, farming utensils, and kitchen furniture, to said plantation belonging, or in any wise appertaining. Second. The one undivided half of the twenty-four following named and described negroes, slaves for life, attached to and employed upon said plantation, viz: Bergoin, a man, aged 35 years; Emson, do., 19 years; Edward, do., 19 years; Jane Black, a woman, aged 18 years; Sylvester, a man, aged 35 years; Jack, a man, aged 35 years; William Green, a man, aged 18 years; Little Phillip, a man, aged 18 years; George A, a man, aged 18 years; Fanny, a woman, aged 17 years; Rachel Johnson, a woman, aged 18 years, and her child, aged five months; Rachel Roberts, a woman, aged 17 years; Betsey, do., aged 14 years; Mary Hodges, do., aged 17 years; Joseph, a boy, aged 11 years; Richard, a man, aged 33 years; Cæsar, do., aged 19 years; Perry, do., aged 18 years; Obadiah, a boy, aged 13 years; Milo, do., aged 15 years; Milly, a woman, aged 17 years; Almira, do., aged 22 years; and Charlotte, do., aged 17 years. And, third, the whole of the

following named and described eight negroes, slaves for life, also attached to and employed upon said plantation, and of which the said vendor is sole owner, viz: Big Phillip, a man, aged 27 years; George Potts, do., aged 22 years; Washington, do., aged 22 years; Henry, do., aged 24 years; Eliza, a woman, aged 19 years; Diana, do., 17 years; Amy, do., aged 38 years; and Mary Cally, a girl, aged 12. To have and to hold all the above described property unto the said Tobias Gibson his heirs, and assigns, forever; subject, however, only to the rights of said vendor, as hereinafter specially reserved and stipulated.

The foregoing sale is made for the price and consideration of seventy thousand dollars, secured to be paid by the said Gibson in the manner following, viz: that whereas the President, Directors and Co. of the Agricultural Bank of the State of Mississippi, in the sum of twenty-five thousand two hundred and seventy-two 02-100 dollars, the same being the aggregate amount of promissory notes executed by the said Harris in favor of the aforesaid President, Directors and Co., both dated the 11th March, A. D. 1839, one for the sum of six thousand three hundred and ninety-eight 55-100 dollars, payable ten months after the first day of April, A. D. 1839, and the other of said notes for the sum of eighteen thousand eight hundred and seventy-three 47-100 dollars, payable twelve months after date; for the security of the payment of which notes the said Harris, by act dated March 16th, 1839, and passed before George W. Keeton, parish judge of Concordia, and recorded in the office of said judge in book K, at pages 207, 208, 209, 210, 211, and 212, did specially mortgage and hypothecate, in favor of said President, Directors and Co., the property herein sold. Now, the said Tobias Gibson does, by these presents, bind and oblige himself to pay, at the maturity thereof, to the said President, Directors and Co., the aforesaid promissory note for the sum of six thousand three hundred and ninety-eight 55-100 dollars, and at the maturity of the other of said promissory notes, say the 16th day of March, A. D. 1841, the said purchaser binds and obliges himself to pay to the said President, Directors and Co. of the Agricultural Bank, one-third of the amount of the larger note, renewed until that time, say six thousand two hundred and ninety-one 16-100 dollars, and the discount, at the rate per cent. aforesaid, for the ensuing twelve months, upon the balance of said note ($12,582 31) remaining unpaid, which discount is eleven hundred and thirty-two 40-100 dollars, making together a sum of seven thousand four hundred and twenty-three 56-100 [dollars,] which is the only payment, upon the price, required of the said Gibson during the year A. D. 1841. On the 16th day of March, A. D. 1842, the said purchaser binds himself to pay to the said Agricultural Bank the deferred and *and* unpaid balance of said note, say six thousand two hundred and twenty-one 16-100 dollars, which shall be the only payment required of the said Gibson for the year 1843. And whereas the said Harris is indebted to the heirs and legal representatives of Epheus Gibson, deceased, in the sum of eleven thousand dollars, with eight per cent. interest thereon since the 16th day of May, A. D. 1847, till paid; to secure the payment of which,

and the interest to accrue thereon, he hath this day, but before the passage of this act, specially mortgaged and hypothecated the property herein sold, in favor of the said heirs and legal representatives of the said Gibson.

Now, the said purchaser binds and obliges himself to pay to said heirs and representatives, on the 16th day of May, A. D. 1844, the one-third of the capital sum of eleven thousand dollars, say three thousand six hundred and sixty-six 60-100 dollars, and the discount, at eight per cent. upon the remaining two-thirds for the ensuing twelve months, which is five hundred and eighty-six 66-100 dollars, making together four thousand two hundred and fifty-three 32-100 dollars, which is to be paid and received as a part of the instalment of the price of this sale; to be paid by said Gibson during the year A. D. 1844. On the 16th May, A. D. 1845, the said Gibson binds himself to pay to said Harris and representatives one-half of the said remaining two-thirds, say three thousand six hundred and sixty-six 66-100 dollars, and two hundred and ninety-three 33-100 dollars, the discount at eight per cent. upon the other half to be deferred for twelve months, making together the sum of three thousand eight hundred and ninety-nine 99-100 dollars to be imputed as aforesaid; and on the 16th May, 1846, the said purchaser assumes and binds himself to pay the balance then remaining due to said heirs and representatives, viz., three thousand six hundred and sixty-six 66-100 dollars, which is to be imputed as aforesaid.

The said vendor binds and obliges himself to pay to the heirs and representatives of the said Epheus Gibson all the interest now accrued upon the aforesaid debt, or which may thereon accrue up to the 16th day of May, A. D. 1844. He also binds himself to the said Gibson, and guarantees him, that upon his making or offering to make the payments of principal and discount as hereinbefore stipulated, to the President, Directors and Company of the Agricultural Bank, and to the heirs and representatives of the said Epheus Gibson, that the same delays and renewals for the payment of the balance shall be accorded by said creditors, as are herein contemplated, and such as will be met by the payments herein before stipulated; and that should said creditors, or either of them, refuse to receive their debts, upon the terms and in the manner provided for by this act, but should require said debts or any part thereof, sooner than is herein provided for, then that the *so required* shall be met and discharged by the said Harris, he assuming for the amount so paid by him the place and condition of said creditors. The amount of the price of the purchaser assumed to be paid as aforesaid by the said purchaser, amounts to the sum of forty thousand four hundred and eighty-nine $\frac{21}{100}$ dollars, leaving still a balance of twenty-nine thousand five hundred and ten $\frac{79}{100}$ dollars, for which the said purchaser has made his several four promissory notes, bearing even date herewith, payable to the order of William Harris at the Agricultural Bank of Mississippi, one for the sum of two thousand dollars, due the 1st day of February, A. D. 1844; one for the sum of six thousand dollars, due the 1st day of February, A. D. 1845; one for the sum of seven thousand dol-

lars, due the 1st of February, 1846; and one other note for the sum of fourteen thousand five hundred and ten $\frac{79}{100}$ dollars, due the first day of February, A. D. 1847. All which notes are marked *ne varietur* by me judge and notary, to identify them with these presents; and it is expressly agreed that the said Tobias Gibson shall have the privilege of deferring and postponing the payment of each of the aforesaid promissory notes for the space of one year after maturity, by paying interest thereon at the rate of eight per cent. for the time deferred, and for the purpose of more effectually securing the punctual payment of the aforesaid seventy thousand dollars, with the interest thereon to accrue, the price of this sale. The said Tobias Gibson declares that he does by these presents specially mortgage and hypothecate the property here purchased by him in favor of the said vendor, promising not to alienate, deteriorate, or incumber the same to the prejudice of this mortgage. It is expressly understood and agreed, and stipulated, by and between the parties to this act, that this is a sale in which the power or right of redemption is specially reserved in favor of the vendor, for the period of ten years from the date of this act, to be by him exercised at any time within the said period of ten years, agreeably to the provisions of the laws of the State of Louisiana.

By the certificate of the recorder of mortgages in this parish, which is hereby made, I, the said judge and notary, do hereby certify, that there does not exist of record in my office any mortgage against the foregoing described property, except a certain mortgage executed on the sixteenth day of March, A. D. 1839, in favor of the Agricultural Bank of Mississippi, at Natchez, to secure the payment of the sum of twenty-five thousand five hundred and seventy-two dollars and two cents; second, a mortgage of even date herewith, executed by the said Harris and wife before the passage of this act, in favor of the heirs and legal representatives of Epheus Gibson, deceased, to secure the payment of the sum of eleven thousand dollars, with eight per cent. interest thereon till paid, from the sixteenth day of May, A. D. eighteen hundred and thirty-seven.

And to these presents personally came and appeared Mistress Caroline Harrison, of lawful age, and wife of the said William *Harris*, and by him herein duly authorized, and after having heard read what is herein before written, declared that in becoming a party to these presents it is her intention and desire to release, in favor of the said Tobias Gibson, all and every claim, mortgage, and privilege whatever, which she now has upon the said property, whether resulting from her marriage with the said Harris or otherwise.

Whereupon, I, the said judge and notary, did inform the said Mrs. Caroline Harris, verbally, apart and out of the presence and hearing of her said husband, the nature and extent of her rights, as follows, to wit:

1st. That, by the laws of this State, the wife has a legal mortgage on the property of her husband, in the following cases, for the restitution of her dowry and the reinvestment of the dotal property sold by

her husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Second. For the restitution and reinvestment of the dotal property which came to her after the marriage, either by succession or donation, from the day the succession was opened, or the donation perfected.

Third. For the reimbursement of the amount of her paraphernal property, alienated by her, and received by her husband, or otherwise disposed of for his individual interest.

Fourth. To indemnify her for debts which she may have contracted with her husband.

And fifth. For the donations which may have been made to her by her husband on account of their marriage; and that by renouncing her said rights on the property hereinbefore described, she deprives herself forever of all recourse thereon. And the said Mrs. Caroline Harris being now well informed of the nature and extent of her rights, with the authorization and assistance of her said husband here present, did thereupon declare and say, that she still persists in her intention to renounce, and that she does hereby formally and expressly renounce, in favor of the said Gibson, all of her rights of mortgage whatever upon the whole and every part of the above described property, hereby ratifying and confirming this sale, and binding herself and her heirs at all times to acknowledge and sustain the validity of this sale.

And the said Tobias Gibson being here present, declared that he accepts this act, with all its clauses.

Done and passed at my office, in the town of Vidalia, the day, month, and year first above written, in presence of David S. Stacy and John R. Hewitt, witnesses residing in this parish, who have also signed this act, with the said appearers, and me, the said judge and notary.

WILLIAM HARRIS,
CAROLINE HARRIS,
TOBIAS GIBSON.

D. S. Stacy,
John R. Hewitt.

G. W. KEETON, *P. Judge*.

State of Louisiana, *parish of Concordia:*

I, Alevin S. Britton, deputy clerk of the probate court in and for the parish of Concordia, do hereby certify, that the above and foregoing is a true copy of the orginal act on file and of record in this office.

In testimony whereof I have hereunto set my hand and the seal of said office, this 12th day of March, A. D. 1846.

ALEVIN S. BRITTON,
D'y clerk probate court.

[E.]

Act of reconveyance, filed with answer.

State of Louisiana, *parish of Concordia, ss:*

Be it remembered, that on this eighteenth day of September, A. D. eighteen hundred and forty-one, before me, James Dunlap, judge and

ex officio notary public in and for the said parish, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared William Harris, and Tobias Gibson and Amanda Fletcher, his wife, herein duly authorized and assisted by her said husband, all residents of the said parish and State, who severally declared and said that, whereas, on the twenty-fourth day of December, A. D. eighteen hundred and thirty-nine, the said William Harris and Caroline, his wife, did, by public act of conveyance, passed before George W. Keeton, judge of said parish, on said day, grant, bargain, and sell, unto said Tobias Gibson, certain lands and premises mentioned and particularly described in the said deed of conveyance, for the consideration therein s t forth, which above mentioned deed has been duly recorded in the office of the judge of the parish of Concordia, in book I, on pages 60 to 65 inclusive; and further, in the said deed referred to he, the said William Harris, the vendor therein named, reserved to himself the right of redemption in the following words, to wit: "It is expressly understood, agreed, and stipulated, by and between the parties to this act, that this is a sale in which the power or right of redemption is specially reserved in favor of the vendor for the period of ten years from the date of this act, to be by him exercised at any time within the said period of ten years, agreeably to the provisions of the laws of the State of Louisiana." And whereas the said William Harris here declared that he is desirous of exercising the right of redemption reserved to himself in the said aforementioned deed, and of taking back the property therein mentioned, and thereby sold and conveyed, at and for the price and consideration the said Tobias Gibson therein agreed to pay unto the said Harris for the same. Now, therefore, he, the said Tobias Gibson as aforesaid, declared and said, that for the consideration hereinafter mentioned and expressed, he has on this day granted, bargained, resold, and reconveyed, and by these presents doth grant, bargain, resell, reconvey, and deliver, unto the said William Harris as aforesaid, and unto his heirs and assigns, forever, all the following mentioned and described property, to wit:

First. One undivided half of that tract of land or cotton plantation, situate in the parish of Concordia, containing, in the aggregate, twelve hundred and nineteen ninety-five hundredths acres, owned jointly by said appearer and the [said] Harris, and upon which the said appearer now resides, and being composed of the following parcels of land, to wit: section No. 4, in township No. 8, in range No. 10 east, situate on Lake St. John, in the parish of Concordia, containing four hundred and sixty-one and seventy hundredths acres.

Second. Lot No. 2, of section No. 3, in township No. 8, in range No. 10 east, containing one hundred and nine and twenty-five hundredths acres; said two tracts of land having been purchased of the United States by Nathaniel Harrison, as per receiver's receipts Nos. 1,345 and 1,346, dated the 4th September, A. D. 1833.

And, third. A tract of land situate in said parish, near Rifle Point, about twelve miles above the town of Vidalia, containing six hundred

and forty-nine acres, more or less, the undivided half of which was acquired by said Gibson by purchase, by act passed before William L. Poindexter, a notary public in and for said parish, dated the 24th day of March, A. D. 1838, and recorded in the office of the parish judge of said parish, in book "H," at pages 318, 319, and 320, together with all the rights and privileges, building, and improvements, stock of cattle, horses, hogs, farming utensils, and kitchen furniture, to said plantation belonging, or in anywise appertaining. Second. The one undivided half of the following named and described negroes, slaves for life, settled on, attached to, and employed upon the said plantation, being twenty-four in number, viz: Bergoin, a man aged 35 years; Emson, do. 19 years; Edward, do. 19 years; Jane Black, a woman aged 18 years; Sylvester, a man aged 35 years; Jack, a man aged 35 years; Wm. Green, a man aged 18 years; Little Phillip, a man aged 18 years; George A., a man aged 18 years; Fanny, a woman aged 17 years; Rachel Johnson, a woman aged 18 years, and her child, aged five months; Rachel Roberts, a woman aged 17 years; Betsy, do. aged 14 years; Mary Hodges, do. aged 17 years; Joseph, a boy aged 11 years; Richard, a man aged 33 years; Cæsar, do. aged 19 years; Perry, do. aged 18 years; Obadiah, a boy aged 13 years; Milo, do. aged 15 years; Milly, a woman aged 17 years; Almira, do. 22 years; and Charlotte, do. aged 17 years. And, third. The whole of the following named and described eight negoes, slaves for life, also attached to and employed upon said plantation, and of which the said vendor is sole owner, viz: Big Philip, a man aged 27 years; George Potts, do. 22 years; Washington, do. 22 years; Henry, do. 24 years; Eliza, a woman aged 19 years; Diana, do. aged 17 years; Amy, do. aged 38 years; and Mary Calley, a girl aged 12 years.

To have and to hold all the above described property unto the said William Harris, and unto his heirs and assigns, forever, free from the claim or claims of all persons whomsoever, legally claiming or to claim the same, by, through, or under him, the said Gibson. The foregoing sale is made for the price and consideration of seventy thousand dollars, the whole of which amount is hereby acknowledged to have been received by the said vendor, except the sum of eleven thousand dollars, with eight per cent. interest thereon since the 16th day of May, A. D. 1837, which amount is due to the heirs and legal representatives of Epheus Gibson, deceased, by the said William Harris, and is secured by mortgage upon all the property hereinbefore mentioned, and which mortgage was originally executed by the said Harris in favor of the said heirs and representatives of Epheus Gibson, deceased, as aforesaid, and was assumed by the said Tobias Gibson, as part of the consideration to be paid by him on the former purchase of this property by him from said Harris; and it is now agreed and stipulated by said Harris, and he hereby binds himself, to pay the full amount of said mortgaged debt and interest to the said heirs and representatives of said Gibson, deceased; and further, he, the said William Harris, doth hereby warrant and defend, and guarantee him, the said Tobias Gibson, from and against any and every personal liability or responsibility to pay the above

mentioned mortgaged debt and interest, or any part thereof due by him, the said William Harris, to the heirs and representatives of Epheus Gibson, deceased, as aforementioned; and whereas as part of the consideration or purchase money of this sale from Harris to Gibson, to be by the said Gibson paid to the said Harris, he, the said Gibson, assumed the payment of the sum of twenty-five thousand two hundred and seventy-two 02-100ths dollars, with interest, &c., the same being the aggregate amount of several promissory notes, executed by said William Harris, in favor of the President, Directors, and Company of the Agricultural Bank of the State of Mississippi; and whereas the said Tobias Gibson has neglected to pay the said two several promissory notes, or any part thereof, according to his said assumption, therefore he, the said Harris, hereby agrees and stipulates himself to pay and take up the said two notes, with all the interest which may or has accrued on the same; and further, that he releases and binds himself to hold harmless the said Tobias Gibson from the payment of the said notes, or any part of the same; and for the remaining part of the consideration, to wit, the sum of twenty-nine thousand five hundred and ten 79-100ths dollars, for which amount he, the said Gibson, made and executed his four several promissory notes, payable to the order of said William Harris; and as part of the consideration of this sale he, the said William Harris, hereby returns to the said Tobias Gibson two of the afore described four several promissory notes, amounting to the sum of sixteen thousand five hundred and ten 74-100ths dollars, being the best and the last of said notes as they fall due, and forever and entirely releases the said Gibson from the payment of the same; and the said Tobias Gibson hereby acknowleges the reception of the said two several aforementioned and described promissory notes, "the other two of which notes, amounting to the sum of $13,000, are not returned to said Gibson at the passing of this act, but the said Harris hereby stipulates and guarantees the return and cancelling of said notes, and to secure the same, hereby specially mortgages, in favor of said Gibson, all the property herein conveyed, together with the growing crop on said land." For a more particular description of the foregoing consideration, reference being had to the act of sale from Harris to Gibson, of record in the office of the parish judge of this parish, in book I, on pages 60 to 65 inclusive, will fully shew.

And the said William Harris, being here present, declares that he accepts this act, with all its clauses; that he waives and dispenses with the production of the certificate of the recorder of mortgages in and for the said parish of Concordia, as to any mortgages, liens, or incumbrances whatever, which may exist of record in his office, upon any part of the aforementioned described property, being himself fully acquainted with the nature and extent of the same.

And to these presents personally came and appeared Mistress Amanda Fletcher, of lawful age, and wife of the said Tobias Gibson, and by him duly authorized and assisted, who declared and said, (after having heard read what is hereinbefore written,) that she approves of this sale

in all its parts, and that she hereby joins her said husband therein; and further, that in becoming a party to these presents, it is her wish and intention to renounce in favor of the said Wm. Harris, the purchaser aforesaid, all the rights, privileges, and mortgages which she now has, or ever had, on any part of the property hereinbefore mentioned and hereby sold and conveyed, or intended so to be, whether resulting to her from her marriage with her said husband or otherwise.

Whereupon I, the said judge and notary, did thereupon inform the said Mistress Amanda Gibson verbally, apart from and out of the presence and hearing of her said husband, that by the laws of the State of Louisiana a wife has a legal mortgage upon all the property of her husband, and on that of the community of acquets and gains, in the following cases, viz: 1st. For the restitution of her dowery, and the reinvestment of the dotal property sold by the husband, and which she brought in marriage, reckoning from the celebration of the marriage. 2d. For the restitution and reinvestment of the dotal property which came to her after the marriage, whether by succession or donation, from the [time the] succession was opened, or the donation perfected. 3d. For the reimbursement of the amount of the *of the* paraphernal property alienated by her, and received by her husband, or otherwise disposed of for his individual interest. 4th. For nuptial presents. 5th. To indemnify her for debts which she may have contracted jointly with her husband. And, 6th. For the donations which may have been made to her by her husband on account of their marriage; and that by renouncing her said rights and privileges she would deprive herself forever of all recourse upon said property on account thereof; but, nevertheless, the said Mrs. Gibson, declaring herself now well informed of the nature and extent of her rights thus secured to her by the laws of this State, still persists in her intention to renounce as aforesaid, and that with the authorization and assistance of her said husband, now present, she doth hereby formally and expressly renounce, in favor of the said William Harris, the purchaser as aforesaid, all her rights, privileges, and mortgages of whatsoever they may be, upon all and every part of the property here before mentioned, and hereby sold and conveyed, hereby subrogating him, the said purchaser, to all her rights, hereby ratifying and confirming this act of sale, and binding herself and her heirs at all times to acknowledge and sustain the validity thereof, and of this her act of full renunciation.

Thus done and passed on the day, month, and year first above written, in the said parish of Concordia, in presence of Elijah Smith and William Brown, competent witnesses, residing in this parish, who have also signed this act with the said parties, and me, the said judge and notary.

TOBIAS GIBSON,
AMANDA M. GIBSON,
WILLIAM HARRIS.

ELIJAH SMITH,
WM. BROWN.

JAMES DUNLAP, *Parish Judge*.

STATE OF LOUISIANA, *Parish of Concordia:*

I, Alevin S. Britton, deputy clerk of the probate court in and for the parish of Concordia, do hereby certify, that the above and foregoing, from page No. 1 to 8 inclusive, is a true copy of the original on file and of record in this office.

In testimony whereof I have hereunto set my hand and the seal of said office, this 11th day of March, A. D. 1846.

[SEAL.]

ALEVIN S. BRITTON,
Deputy clerk probate court.

Circuit [court] U. S. for the fifth circuit, district of Louisiana.

Case agreed.

ANN BRABSTON
vs.
TOBIAS GIBSON.

1st. The defendant, Tobias Gibson, on the 24th day of December, 1839, executed the promissory notes sued on this case under the circumstances and for the consideration set forth in the deed of sale, executed to him by the payee of said notes, William Harris, a copy of which act or deed of sale is hereto annexed, and forms a part of this case, as also the said two notes, which are respectively marked A, B and C.

2d. On the 21st of January, 1840, the payee of the said two notes, William Harris, being then the holder thereof, endorsed and delivered the same to Mrs. Anne Brabston, the plaintiff, as collateral security, to secure the payment of the said Harris' note to the said Anne Brabston, dated on the said 21st January, 1840, and payable 12 months after date, for the sum of six thousand dollars, and on the same notes mentioned in a receipt from the said Anne to the said Harris, under date of the said 21st of January, 1840, which is hereto annexed, and makes part of this case, and marked D.

3d. On the 18th of December, 1841, the said defendant, Tobias Gibson, did reconvey to the said William Harris all the property mentioned in the act of sale from Harris to the said Gibson, of the date of the 24th of December, 1839, before mentioned and referred to, and took back and cancelled all the notes mentioned in said act of December, 1839, except the two notes now sued on, and in and by the said act reserved to himself a mortgage to secure him against liability on said two notes, as is set forth in said act of reconveyance, which is hereto annexed and marked E, and makes part of this case.

4th. The plaintiff is now the holder of the note of the said Harris for six thousand dollars, dated the 21st January, 1840, and payable twelve months after date, and which is the same note mentioned in the receipt from said plaintiff to said Harris, of the 21st January, 1840, before referred to and made part of this case, and the said note is now in the hands of the plaintiff and unpaid, and is hereto annexed and made part of this case, and marked F.

5th. The mortgage reserved by the defendant, Gibson, in the act of

reconveyance from him to the said Harris, of the 18th of September, 1841, to secure the return and cancelling of the said two notes, is duly recorded and subsisting and unreleased, as appears by the certificate of the recorder hereto annexed, marked G, and made part of this case.

6th. The payee of the said two notes, William Harris, was on the day of March, 1843, declared a bankrupt by a decree of the district court of the United States for the Louisiana district, *under the Bankrupt law of the United States for the Louisiana district*, under the Bankrupt law of the United States, and by the further proceedings in bankruptcy before said court has obtained his final discharge and certificate.

7th. Harris, the payee, resides in the State of Mississippi, and the notes sued on were endorsed and transferred to plaintiff, and the receipt given by her therefor, made and executed by her at Natchez, in the State of Mississippi, in which State said notes are payable. If on this case as herein stated the law be for the plaintiff, then judgment to be entered for the said plaintiff for the sum of six thousand dollars, with ten per cent. per annum interest, from the 21st January, 1840, till paid; and if the law be for the defendant, then judgment to be entered for the defendant.

PRENTISS & FINNEY, *Deft's Att'y.*
ROB. MOTT, *For Plaintiff.*

Act of sale C.

THE STATE OF LOUISIANA, *parish of Concordia:*

Be it remembered, that on this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, before me, George W. Keeton, parish judge and ex officio notary public in and for the parish aforesaid, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared William Harris, a citizen and resident of Adams county in the State of Mississippi, which appearer did declare and say, that for the consideration hereinafter expressed he hath sold, conveyed, transferred, and by these presents does sell, convey, transfer, and deliver, with full warranty of title against the claims of all persons whatsoever, against all legal and redhibitory defects, and against all mortgages, liens, and incumbrances whatever, (except those only, the payment of which is hereinafter expressly assumed by the vendee,) unto Tobias Gibson, a resident of the parish of Concordia, here present and accepting for himself, his heirs and assigns, all the following described property, to wit: First. One undivided half of that tract of land or cotton plantation situate in the parish of Concordia, containing in the aggregate twelve hundred and nineteen ninety-five hundredths acres, owned jointly by said appearer and the said Tobias Gibson, and upon which the said Gibson now resides, and being composed of the following parcels of land, to wit: First. Section No. 4, in township No. 8, in range No. 10 east, situate on Lake St. John, in the parish of Concordia, containing four hundred and sixty-one and seventy-hundredths acres. Second. Lot No. 2, of section No. 3, in township No. 8, in range 10 east, containing one hundred and nine and twenty-

five-hundredths acres; said two tracts of land having been purchased of the United States by Nathaniel Harrison, as per the receiver's receipts Nos. 1,345 and 1,346, dated the 4th September, A. D. 1833; and, third, a tract of land situated in said parish, near Rifle Point, about twelve miles above the town of Vidalia, containing six hundred and forty-nine acres, more or less; the undivided half which was acquired by said appearer from said Gibson by purchase, by act passed before William L. Poindexter, a notary public in and for said parish, dated the 24th day of March, A. D. 1838, and recorded in the office of the parish judge of said parish, in book H, at pages 318, 319, and 320, together with all the rights and privileges, buildings and improvements, stock of cattle, horses, hogs, farming utensils, and kitchen furniture, to said plantation belonging or in anywise appertaining. Second. The one undivided half of the twenty-four negroes, slaves for life, attached and employed upon said plantation, viz: Bergoin, a man aged 35 years; Emson, do. 19 years; Edward, do. 19 years; Jane Black, a woman aged 18 years; Sylvester, a man aged 35 years; Jack, a man aged 35 years; William Green, a man aged 18 years; Little Phillip, a man aged 18 years; George A, a man aged 18 years; Fanny, a woman aged 17 years; Rachel Johnson, a woman aged 18 years, and her child, aged 5 months; Rachel Robert, a woman aged 17 years; Betsey, do. aged 14 years; Mary Hodgers, do. aged 17 years; Joseph, a boy aged eleven years; Richard, a man aged 33 years; Cæsar, do. aged 19 years; Perry, do. aged 18 years; Obadiah, a boy aged 13 years; Milo, do. aged 15 years; Milly, a woman 17 years; Almira, do. aged 22 years; and Charlotte, do. aged 17 years. And, third. The whole of the following named and described eight negroes, slaves for life, also attached to and employed upon said plantation, and of which the said vendor is sole owner, viz: Big Philip, a man aged 27 years; George Potts, do. aged 22 years; Washington, do. aged 22 years; Henry, do. aged 24 years; Eliza, a woman aged 19 years; Diana, do. aged 17 years; Aimy, do. aged 38 years; and Mary Colly, a girl aged 12 years.

To have and to hold all the above described property, unto the said Tobias Gibson, his heirs and assigns, forever, subject, however, only to the rights of the said vendor, as hereinafter specially reserved [and] stipulated. The foregoing sale is made for the price and consideration of seventy thousand dollars, secured to be paid by the said Gibson in the manner following, to wit: That whereas the said Harris, the vendor, is indebted to the President, Directors and Company of the Agricultural Bank of the State of Mississippi, in the sum of twenty-five thousand two hundred and seventy-two 02-100 dollars, the same being the aggregate amount of two promissory notes, executed by the said Harris in favor of the aforesaid President, Directors & Co., both dated the 16th March, A. D. 1839, one for the sum of six thousand three hundred and ninety 55-100 dollars, payable ten months after the first day of April, A. D. 1839, and the other of said notes for the sum of eighteen thousand eight hundred and seventy-three 47-100 dollars, payable twelve months after date; for the security of the payment of which notes the said Harris,

by act dated March 16th, 1839, and passed before George W. Keeton, parish judge of the parish of Concordia, and recorded in the office of said judge, in book K, at pages 207, 208, 209, 210, 211, and 212, did specially mortgage and hypothecate, in favor of said President, Directors and Co., the property herein sold. Now, the said Tobias Gibson does, by these presents, bind and oblige himself to pay, at the maturity thereof, to the said President, Directors and Co., the aforesaid promissory notes, for the sum of six thousand three hundred and ninety eight 55-100 dollars, and at the maturity of the other of said promissory notes, say, the 16th day of March, 1840, to pay the discount thereon at the rate of nine per cent. per annum for the ensuing twelve months, which discount amounts to the sum of one thousand six hundred and ninety-eight 61-100 dollars, which, added to the amount of the other promissory note, makes the sum of eight thousand and ninety-seven 16-100 dollars, which is the whole payment upon the price of this sale which the said Gibson is bound to make during the year A. D. 1840. On the 16th of March, 1841, the said purchaser binds and obliges himself to pay to the said President, Directors & Co. of the Agricultural Bank, one-third of the amount of the larger note reserved until that time, say six thousand two hundred and ninety-one 16-100 dollars, and the discount at the rate per cent. aforesaid, for the ensuing twelve months upon the balance of said note ($12,582.31) remaining unpaid, which discount is eleven hundred and thirty-two 40-100 dollars, making together a sum of seven thousand four hundred and twenty-three 50-100 dollars, which is the only payment required of the said Gibson during the year A. D. 1841. On the 16th day of March, 1842, the said purchaser binds himself to pay to the said Agricultural Bank the one-half of the deferred balance of said note, say six thousand two hundred and ninety-one 16-100 dollars, and the discount for the ensuing twelve months at the rate per cent. aforesaid on the half of said note ($6291.16) remaining unpaid, which discount amounts to five hundred and sixty-six 20-100 [dollars,] amounting together to six thousand eight hundred and fifty-seven 36-100 dollars, being the whole amount of payment upon the price required of said Gibson for the year A. D. 1842. On the 16th March, A. D. 1843, the said Gibson binds himself to pay to said Agricultural Bank the deferred balance of said note, say six thousand two hundred and ninety-one 16-100 dollars, which shall be the only payment required of the said Gibson for the year A. D. 1843. And whereas the said Harris is [indebted] to the heirs and legal representatives of Epheus Gibson, deceased, in the sum of eleven thousand dollars, with eight per cent. interest thereon, since the 16th day of May, A. D. 1837, till paid, to secure the payment of which, and the interest to accrue thereon, he has this day, but before the passage of this act, specially mortgaged and hypothecated the property herein sold in favor of the said heirs and legal representatives of the said Gibson. Now, the said purchaser binds and obliges himself to pay to said heirs and representatives on the 16th day of May, A. D. 1844, the one-third of the capital sum of eleven thousand dollars, say three thousand six hun-

dred and sixty-six 66-100 [dollars,] and the discount at eight per cent. upon the remaining two-thirds, for the ensuing twelve months, which is five hundred and eighty-six 66-100 dollars, making together four thousand two hundred and fifty-three 32-100 dollars, which is to be imputed and received as a part of the instalment of the price of this sale to be paid by said Gibson during the year A. D. 1844. On the 16th May, A. D. 1845, the said Gibson binds himself to pay to said heirs and representatives one-half of the said remaining two-thirds, say three thousand six hundred and sixty-six 66-100 dollars, and two hundred and ninety-three 33-100 dollars, the discount at eight per cent. upon the other half to be deferred for twelve months, making together the sum of three thousand eight hundred and ninety nine 99-100 dollars, to be imputed as aforesaid. And on the 16th May, A. D. 1846, the said purchaser assumes and binds himself to pay the balance then remaining due to said heirs and representatives, viz., three thousand six hundred and sixty-six 66-100 dollars, which is to be imputed as aforesaid. The said vendor binds and obliges himself to pay to the heirs and representatives of the said Epheus Gibson all the interest now accrued upon the aforesaid debt, or which may thereon accrue up to the 16th of May, A. D. 1844. He also binds himself to the said Gibson, and guarantees him that, upon his making or offering to make the payments of the principal and discount, as hereinbefore stipulated, to the President, Directors & Co. of the Agricultural Bank, and to the heirs and representatives of the said Epheus Gibson, that the same delays and renewals for the payment of the balance shall be accorded by said creditors as are herein contemplated, and such as will be met by the payments hereinbefore stipulated; and that, should said creditors, or either of them, refuse to receive their said debts upon the terms and in the manner provided for by this act, but should require said debts, or any part thereof, sooner than is herein provided for, then that the same so required shall be met and discharged by the said Harris, he assuming for the amount so paid by him the place and condition of said creditors. The amount of the price of the purchase, secured to be paid as aforesaid by the said purchaser, amounts to the sum of forty thousand four hundred and eighty-nine 21-100 dollars, leaving still a balance of twenty-nine thousand five hundred and ten 79-100 dollars, for which the said purchaser has made his several four promissory notes, bearing even date herewith, payable to the order of William Harris, at the Agricultural Bank of Mississippi—one for the sum of two thousand dollars, due the 1st day of February, A. D. 1844; one for the sum of six thousand dollars, due the 1st day of February, A. D. 1845; one for the sum of seven thousand dollars, due the 1st day of February, A. D. 1846; and one other note for the sum of fourteen thousand five hundred and ten 79-100 dollars, due the 1st day of February, A. D. 1847—all of which notes are marked "ne varietur" by me, judge and notary, to identify them with these presents. And it is expressly agreed that the said Tobias Gibson shall have the privilege of deferring and postponing the payment of each of the aforesaid promissory notes for the space of one year after maturity, by paying interest

thereon at the rate of eight per cent. for the time deferred; and for the purpose of more effectually securing the punctual payment of the aforesaid seventy thousand dollars, with the interest thereon to accrue, the price of this sale, the said Tobias Gibson declares that he does, by these presents, specially mortgage and hypothecate the property here purchased in favor of the said vendor, promising not to alienate, deteriorate, or incumber the same, to the prejudice of this mortgage. It is expressly understood, agreed, and stipulated, by and between the parties to this act, that this is a sale in which the power or right of redemption is specially reserved in favor of the vendor, for the period of ten years from the date of this act, to be by him exercised at any time within the said per od of ten years, agreeably to the provisions of the laws of the State of Louisiana.

By the certificate of the recorder of mortgages in this parish, which is hereby read, I, the said judge and notary, do hereby certify, that there does not exist of record in my office any mortgage against the foregoing described property, except a certain mortgage executed by the said William Harris and wife, executed on the sixteenth day of March, A. D. 1839, in favor of the Agricultural Bank of Mississippi, at Natchez, to secure the payment of the sum of twenty-five thousand two hundred and seventy-two dollars and two cents. Second, a mortgage of even date herewith, executed by the said Harris and wife, before the passage of this act, in favor of the heirs and legal representatives of the succession of Epheus Gibson, deceased, to secure the payment of the sum of eleven thousand dollars, with interest thereon at eight per cent. till paid, from the sixteenth day of May, A. D. eighteen hundred and thirty-seven. And to these presents personally came and appeared Mrs. Caroline Harrison, of lawful age, and wife of the said William Harris, by him duly authorized, and after having heard read what is herein before written, declared that in becoming party to these presents, it is her intention and desire to release, in favor of the said Tobias Gibson, all and every claim, mortgage, and privilege whatever which she now has upon the said property, whether resulting from her marriage with the said Harris or otherwise.

Whereupon, I, the said judge and notary, did inform the said Mrs. Caroline Harris verbally, apart and out of the presence and hearing of her said husband, the nature and extent of her rights, as follows, to wit:

1. That by the laws of this State the wife has a legal mortgage on the property of her husband, in the following cases: for the restitution of her dowry and the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage.

Second. For the restitution and reinvestment of the dotal property which came to her after the marriage, either by succession or donation, from the day the succession was opened, or the donation perfected.

Third. For the reimbursement of the amount of her paraphernal property alienated by her, and received by her husband, or otherwise disposed of for his individual interest.

Fourth. To indemnify her for her debts which she may have contracted with her husband; and

Fifth. For the donations which may have been made to her husband on account of their marriage; and that by renouncing her said rights on the property hereinbefore described, she deprives herself forever of all recourse thereon.

And the said Mrs. Caroline Harris, being now well informed of the nature and extent of her rights, with the authorization and assistance of her said husband here present, did thereupon declare and say, that she still persisted in her intention to renounce, and that she does hereby formally and expressly renounce in favor of the said Gibson all her rights of mortgage whatever upon the whole and every part of the above described property, hereby ratifying and confirming this sale, and binding herself and her heirs at all times to acknowledge and sustain the validity of this sale.

And the said Tobias Gibson being here present, declared that he accepts this act, with all its clauses.

Done and passed at my office in the town of Vidalia, the day, month, and year first above written, in presence of David S. Stacy and John R. Hewitt, witnesses residing in this parish, who have also signed this act with the said appearers, and me, the said judge and notary.

WILLIAM HARRIS,
CAROLINE HARRIS,
TOBIAS GIBSON.

D. S. Stacy,
John R. Hewitt.

G. W. KEETON, *P. Judge.*

Tobias Gibson, the within named mortgagor, having on the 8th day of November, A. D. eighteen hundred and forty-one, exhibited to me, cancelled, the two notes mentioned and described in this act, the first for the sum of two thousand dollars, payable on the first day of February, A. D. eighteen hundred and forty-four, and the other for the sum of fourteen thousand five hundred and ten $\frac{79}{100}$ dollars, and desired the mortgage herein granted might be cancelled for the amount of said two notes, I do therefore hereby erase, cancel, and annul the mortgage herein given and granted for the amount of the said two afore described promissory notes.

JAMES DUNLAP, *Parish Judge.*

State of Louisiana, *Parish of Concordia:*

I, James H. Veazie, parish judge and ex officio recorder of mortgages in and for the parish of Concordia, do hereby certify, that the above is a true copy of the release as made on the record of the within act as recorded in book I, pages 60, 61, 62, 63, 64, and 65.

In testimony whereof I have hereunto set my hand and official seal, this 18th of April, A. D. 1846.

JAMES H. VEAZIE, *P. Judge.*

STATE OF LOUISIANA, *Parish of Concordia:*

I, James H. Veazie, parish judge and ex officio recorder of mortgages, deeds, &c., in and for the parish of Concordia, do hereby certify, that the above and foregoing, from page 1 to 9, inclusive, is a true copy of the original act on file and of record in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, this 18th day of April, A. D. 1846.

JAMES H. VEAZIE, *P. Judge*.

Receipt D.

NATCHEZ, *January* 21, 1840.

Received of William Harris two certain notes, made by Tobias Gibson in favor of William Harris, and by him endorsed, both dated 24th December, 1839 and payable (as follows:) One for $6,000, say six thousand dollars, due 1st of February, 1845; the other for $7,000, say seven thousand dollars, due on the first of February, 1846, which notes are to be held by me as collateral security for the payment of a certain note this day executed by William Harris, and delivered to me, dated Natchez, 21st January, 1840, payable 12 months after date, to my order, for six thousand dollars.

ANN BRABSTON.

(Endorsed.)—The within receipt of Ann Brabston is admitted to be genuine, and the signature in her own handwriting, and that she is the plaintiff in the above named case; and that the receipt was executed at the time it purports to have been by its date.

ROB. MOTT,
Attorney for plaintiff.

Note F.

$6,000 *Dolls.* NATCHEZ, *January* 21, 1840.

Twelve months after date, I promise to pay Ann Brabston, or order, six thousand dollars, lawful money of the United States, for value received; bearing ten per cent. per annum from date, it being for a bona fide loan of money, renewable.

WM. HARRIS.

Certificate G.

STATE OF LOUISIANA,
Parish of Concordia.

I, James H. Veazie, parish judge and ex officio notary public and recorder of mortgages, in and for said parish, duly commissioned and qualified, do hereby certify, that there does not exist of record in my office any mortgage, lien, or incumbrance on the property conveyed by William Harris and wife to Tobias Gibson and wife, which deed of conveyance was passed before Geo. W. Keeton, parish judge and ex officio notary public, on the 24th day of December, A. D. 1839, and

recorded same day in book I, pages 60, 61, 62, 63, 64, and 65, inclusive, except the mortgages therein specified and recited, and the following, to wit, a mortgage clause contained in a deed of reconveyance of the property above mentioned, by the aforesaid Gibson and wife to the said Harris and wife, made and executed before James Dunlap, P. J., and ex officio notary public, on the 18th day of September, 1841, which mortgage clause recites as follows: "The other two of which notes, amounting to the sum of $13,000, are not returned to said Gibson at the passing of this act, but the said Harris hereby stipulates and guaranties the return and cancelling of said notes, and to secure the same hereby specially mortgages in favor of said Gibson all the property herein conveyed, together with the growing crop on said land."

Attest: JAMES DUNLAP,
Parish Judge.

Recorded September 18th, A. D. 1841.

In testimony whereof I have hereunto set my hand and official seal, this 18th day of April, A. D. 1846.
[SEAL.]
JAS. H. VEAZIE,
P. Judge.

And afterwards, to wit, on the 10th day of November, A. D. 1846, this case coming on to be tried before the honorable Theodore H. McCaleb, district judge, judgment was rendered for the defendant, in the words and figures following, to wit:

ANN BRABSTON
vs.
TOBIAS GIBSON.

New Orleans Tuesday, November 10, 1846.

Adjourned term of April, A. D. 1846; court met pursuant to adjournment. Present, the hon. Theo. H. McCaleb, district judge.

This case having been argued and submitted to the court at the late term thereof, as a "*case agreed*" between the parties; and the court having maturely considered the same, and being now fully advised in the premises, doth now order, adjudge, and decree, that final judgment be and the same is hereby rendered in favor of the defendant, Tobias Gibson, and against the plaintiff, Ann Brabston, with the costs of this suit to be taxed.

Judgment rendered November 10th, 1846. Judgment signed November 16, 1846.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And afterwards, to wit, on the 13th day of January, A. D. 1847, came the plaintiff by her counsel, Rob. Mott, esqr., and filed in said court her petition for a writ of error, in the words and figures following, to wit:

Circuit court of the United States, 5th circuit, Louisiana district.

ANN BRABSTON
vs.
TOBIAS GIBSON.

To the honorable the judges of the circuit court of the United [States] for the 5th circuit and district of Louisiana.

The petition of Ann Brabston, the plaintiff in the above mentioned case, humbly shews, that there is error in the final judgment rendered in the above case in favor of the said defendant, as the said plaintiff is informed and believes.

Wherefore, the said plaintiff prays, that a writ of error may be allowed, returnable to the Supreme Court of the United States, according to law.

ROBT. MOTT & GRIMES,
For Defendant.

Be it so, on the plaintiff entering into bond with William M. Laughlin & Co. as sureties, in the sum of three hundred dollars, to prosecute the writ of error according to law.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And afterwards, to wit, on the 13th day of January, A. D. 1847, came the plaintiff, Ann Brabston, by her counsel, Grymes and Mott, esqs., and filed her assignment of errors upon the record as follows:

Circuit court of the United States, 5th circuit, Louisiana district.

ANN BRABSTON
vs.
TOBIAS GIBSON.

Assignment of errors.

The plaintiff in error assigns for error, in the record of the proceedings in this case, that the judgment ought to have been for the plaintiff; whereas it has been rendered for the defendant.

Wherefore the said plaintiff prays that the same may be reversed, and for all further judgment that the nature of the case may require.

MOTT & GRYMES,
For plaintiff in error.

And afterwards, to wit, on said 13th January, 1847, said plaintiff filed her bond for writ of error, as follows:

Know all men by these presents: That we, Ann Brabston as principal, and William Laughlin & Co. as sureties, are held and firmly bound to Tobias Gibson, his heirs and assigns, in the full and just sum of three hundred dollars, to be paid to the said Tobias Gibson, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our

seals, and dated this fifth day of December, in the year of our Lord one thousand eight hundred and forty-six.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Ann Brabston was plaintiff, and Tobias Gibson was defendant, judgment was rendered against the said Ann Brabston, plaintiff, and the said Ann Brabston having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Tobias Gibson, citing and admonishing him to be and appear at a Supreme court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Ann Brabston shall prosecute her said writ to effect, and answer all damages and costs if she fail to make plea good, then the above obligation to be void, else to remain in full force and virtue.

ANN BRABSTON, [SEAL.]
WM. LAUGHLIN & CO. [SEAL.]

Sealed and delivered in the presence of—
ROB. MOTT.

CLERK'S OFFICE,
United States circuit court, 5th circuit and district of Louisiana:

I, Edmund Randolph, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing forty-two pages contain a full, faithful, and true transcript of the record and proceedings of the case of Ann Brabston vs. Tobias Gibson, No. 1457, so far as the same remain on file and of record in the said court.

In testimony whereof I have hereunto signed my name, and affixed the seal of the said court, at the city of New Orleans, this [SEAL.] 19th day of June, A. D. 1847, and 71st year of American independence.

ED. RANDOLPH, *Clerk*.

I, Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana, and associate judge of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that Edmund Randolph, who signed the foregoing certificate, is the clerk of the said circuit court of the United States for the fifth circuit and district of Louisiana, and was at the time of so doing, and that full faith and credit are due and ought to be given to his acts as such; and that the foregoing certificate is in due form of law.

Witness my hand and seal, at New Orleans, this 21st day of June, A. D. 1847.

THEO. H. McCALEB. [SEAL.]

THE UNITED STATES OF AMERICA:

The President of the United States of America, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Ann Brabston and Tobias Gibson, a manifest error hath happened to the great damage of the said Ann Brabston, as by her complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this thirteenth of January, [SEAL.] in the year of our Lord one thousand eight hundred and forty-seven.

ED. RANDOLPH,
Clerk of the United States circuit court and district of Louisiana.

Return of writ of error.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, in pursuance of the statute in such cases made and provided, this 13th day of January, A. D. 1847.

ROB. MOTT,
Attorney of plaintiff in error.

Citation in error.

The United States of America, to Tobias Gibson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, wherein Ann Brabston is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this thirteenth day of January, in [SEAL.] the year of our Lord one thousand eight hundred and forty-seven.

THEO. H. McCALEB,
U. S. Judge.

Marshal's return.

Received February 2d, 1847, and on the 11th day of the same month I served a copy of the within citation in error on Tobias Gibson, by leaving the same at his domicil, in the parish of Concordia, district of Louisiana, 315 miles from New Orleans, with his wife, Mrs. Amanda Gibson, a white person, over the age of 14 years. Returned 17th February, 1847.

W. WAGNER,
U. S. Marshal.

Filed 28th September, 1847.